

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH LITT, as an individual, and on
behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN STONE & METAL CORP., a
Colorado Corporation, dba Shane Co.; and
DOES 1 through 10,

Defendants.

CASE NO. 3:14-cv-02804-PJH

**[PROPOSED] ORDER AND FINAL
JUDGMENT GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Judge: Hon. Phyllis J. Hamilton
Date: July 8, 2015
Time: 9:00 a.m.
Courtroom: 3

1 This matter came on for hearing on July 8, 2015, at 9:00 a.m., in Courtroom
 2 3 of the United States District Court for the Northern District of California before
 3 the Honorable Phyllis J. Hamilton. Due and adequate notice having been given to
 4 the Settlement Classes (as defined below), and the Court having considered all
 5 papers filed and proceedings held herein, all oral and written comments and any
 6 objections received regarding the proposed settlement, having reviewed the record
 7 in the above captioned matter, and good cause appearing thereto,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
 9 FOLLOWS:

10 1. The Court has jurisdiction over the subject matter of the above-
 11 captioned action (the “Action”), the Class Representative, Defendant Western
 12 Stone & Metal Corp. (“WSM” or “Defendant”), and all members of the Settlement
 13 Classes, which are defined as follows:

14
 15 **California Settlement Class:** All non-exempt employees of Western Stone
 16 & Metal Corp., who worked in California between June 17, 2010, and April
 17 1, 2015.

18 **Non-California Settlement Class:** All non-exempt employees of Western
 19 Stone & Metal Corp., who worked outside of California between June 17,
 20 2011, and November 8, 2014.

21 2. The terms “Settlement” or “Settlement Agreement” shall refer to the
 22 Settlement Agreement filed by the Class Representative on February 27, 2015
 23 (Docket Entry 30-2), and all terms herein shall have the same meaning as the terms
 24 defined in the Settlement Agreement, unless specifically provided herein.

25 3. The Court grants final approval of the Parties’ Settlement Agreement
 26 because it meets the criteria for final settlement approval. The settlement falls
 27 within the range of possible approval as fair, adequate and reasonable, appears to
 28

1 be the product of arm's-length and informed negotiations, and treats all members
2 of the Settlement Classes fairly.

3 4. The Court finds that the distribution by U.S. first-class mail of the
4 Notice and Exclusion Form constituted the best notice practicable under the
5 circumstances to all persons within the definition of the Settlement Classes and
6 fully met the requirements of due process under the United States Constitution and
7 applicable state law. Based on evidence and other material submitted in
8 conjunction with the Final Approval Hearing, the Notice to the Settlement Classes
9 was adequate. The Notice informed members of the Settlement Classes of the
10 terms of the Settlement, their right to object to the Settlement or Class Counsel's
11 Motion for Attorney's Fees and Costs and the Class Representative's Incentive
12 Payment, their right to appear in person or by counsel at the Final Approval
13 Hearing and be heard regarding approval of the Settlement and Class Counsel's
14 motion for Attorney's Fees and Costs and the Class Representative's Incentive
15 Payment, and right to exclude themselves from the Settlement and pursue their
16 own remedies. Adequate periods of time were provided by each of these
17 procedures. No members of the Settlement Classes objected to the Settlement or
18 Class Counsel's motion for Attorney's Fees and Costs and the Class
19 Representative's Incentive Payment, and only 44 members of the Settlement
20 Classes (approximately 3%) opted out of the Settlement.
21

22 5. The Court finds, for purposes of settlement only, that the Settlement
23 Classes satisfy the applicable standards for certification under Federal Rules 23(a),
24 and 23(b)(3). Accordingly, solely for purposes of effectuating this Settlement, this
25 Court has certified the Settlement Classes, as defined above. Because the
26 Settlement Classes are being certified here for settlement purposes only, the Court
27 need not (and does not) address the manageability requirement of Rule 23(b)(3).
28 *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).

1 6. The Court approves the Settlement, and each of the releases and other
2 terms set forth in the Settlement Agreement, as fair, just, reasonable and adequate
3 as to the Settlement Classes, the Class Representative, and WSM (collectively the
4 “Settling Parties”). The Settling Parties and the Claims Administrator are directed
5 to perform in accordance with the terms set forth in the Settlement Agreement.

6 7. Except as to any individual member of the Settlement Classes who
7 has validly and timely opted out of the Settlement, all of the claims asserted in the
8 Action are dismissed with prejudice as to the Class Representative and the
9 members of the Settlement Classes. The Settling Parties are to bear their own
10 attorney’s fees and costs, except as otherwise provided in the Settlement
11 Agreement.

12 8. By this Judgment, the Class Representative and each member of the
13 Settlement Classes who has not validly and timely requested exclusion from the
14 Settlement by opting out (collectively the “Releasing Members”), hereby release
15 WSM and the Released Parties (as defined in the Settlement Agreement) from the
16 Released Claims (as defined in the Settlement Agreement).

17 9. By this Judgment, the Releasing Members and Class Counsel shall be
18 deemed to have released all claims for attorney’s fees and costs incurred in
19 connection with the litigation and settlement of the Action.

20 10. The Action is dismissed on the merits and with prejudice,
21 permanently barring the Releasing Members from prosecuting any of the Released
22 Claims. The Court reserves and retains exclusive and continuing jurisdiction over
23 the Action, the Class Representative, the Settlement Classes, and WSM for the
24 purposes of supervising the implementation, effectuation, enforcement,
25 construction, administration and interpretation of the Settlement Agreement and
26 this Judgment.
27
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1 11. The Court finds that the plan of allocation for the shares of the Gross
2 Settlement Payment as set forth in the Settlement Agreement is fair and reasonable
3 and that distribution of the Net Settlement Fund to the Settlement Classes shall be
4 done in accordance with the terms outlined in the Notice and Settlement
5 Agreement.

6 12. The Court hereby orders the appointment of Sarah Litt as Class
7 Representative for the Settlement Classes for purposes of settlement.

8 13. The Court hereby orders the appointment of Hernaldo J. Baltodano of
9 Baltodano & Baltodano LLP, and Paul K. Haines and Fletcher W. Schmidt of
10 Boren, Osher & Luftman LLP as Class Counsel for the Settlement Classes for
11 purposes of settlement and the releases and other obligations therein.

12 14. WSM has agreed for the Claims Administrator to pay from the Gross
13 Settlement Payment: (i) the Claims Administrator its reasonable fees for its
14 services; and (ii) the Incentive Payment to the Class Representative to reimburse
15 them for their valuable services to the Settlement Classes. The Court hereby
16 approves the payment of settlement administration costs in the amount of \$25,000
17 to CPT Group, Inc., the Claims Administrator, for services rendered in this matter.
18 The Court also approves the Incentive Payment to the Class Representative in the
19 amounts of \$5,000, to reimburse the Class Representative for her valuable services
20 in initiating and maintaining this litigation and the benefits conferred onto the
21 Settlement Classes and WSMs current and future employees as a result of the
22 Action. The Court finds that these payments are fair and reasonable. The Claims
23 Administrator is directed to make the foregoing payments in accordance with the
24 terms of the Settlement Agreement.

25 15. The Court hereby awards to Class Counsel the amount of \$162,500
26 for attorney's fees, and the amount of \$24,622.39 for costs. Based on Plaintiff's
27 Motion for Attorney's Fees and Costs, and Class Representative Incentive
28

1 Payment, the Court finds that Class Counsel advanced legal theories on a
2 contingent-fee basis, and that their efforts resulted in a substantial monetary
3 recovery for the Settlement Classes in addition to meaningful non-monetary relief.
4 The Court finds this payment to be fair and reasonable. The Claims Administrator
5 is ordered to wire these funds to Class Counsel in accordance with the terms of the
6 Settlement Agreement.

7 16. This document shall constitute a judgment for purposes of Rule 58 of
8 the Federal Rules of Civil Procedure.

9 IT IS SO ORDERED.

10
11 Dated: July 10, 2015

12 The Honorable Phyllis J. Hamilton
13 United States District Judge

